

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 30:235. Sales ~~[of utility services]~~ to the federal government.

5 RELATES TO: KRS 139.260, 139.470

6 STATUTORY AUTHORITY: KRS 131.130(1)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of
8 Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS
9 139.470 was amended by Ky Acts Chapter 77, Pt III, Sec 1~~[The 1976 Kentucky General Assembly amended~~
10 ~~the sales tax law]~~ to exempt sales to Kentucky State Government and to local governments in Kentucky,
11 effective July 1, 1976. ~~[Sales of utility services to the federal government have continued to be taxed under~~
12 ~~policy that has been followed since the inception of the sales tax in 1960. All other sales to the federal~~
13 ~~government had been exempt. Recent research by the Attorney General's Office reveals some case law~~
14 ~~supporting the government's claim that to tax sales to the federal government constitutes discrimination~~
15 ~~against the federal government.]~~ This administrative regulation explains how the sales tax is to apply to
16 transactions involving the federal government, consistent with the treatment of sales to Kentucky State
17 Government and local governments in Kentucky.~~[ease law referred to above.]~~

18 ~~[Section 1. On and after the 30th day following the effective date of this administrative regulation, sales~~
19 ~~tax does not apply to receipts from sales to the federal government. This administrative regulation is~~
20 ~~prospective only and no refunds or credit adjustments will be made for purchases made prior to the 30th~~
21 ~~day following the effective date of this administrative regulation. Also, no assessments will be made on~~
22 ~~sales that were exempted administratively by the cabinet during that same period.]~~

1 Section 1.~~[2.]~~ The term "federal government" as used in this administrative regulation means federal
2 agencies, instrumentalities or corporations which are exempt from all state taxation under the Federal
3 Constitution or statutes. An agency, corporation or instrumentality is not entitled to the exemption simply
4 because it is regulated by or receives funds or grants from the federal government.

5 Section 2.~~[3.]~~ The exemption applies only to sales made directly to the federal government for use in
6 the government function. Any official or employee who uses a~~[his]~~ position to make a tax-free purchase
7 for~~[his own]~~ personal use or that of any other person will be subject~~[-himself]~~ to the penalties provided in
8 KRS 139.990 and other applicable laws.


9 Section 3.~~[4.]~~ Include sales~~[Sales]~~ made directly to the federal government~~[-are to be included]~~ in the
10 gross receipts~~[-to be]~~ entered on line one (1) of the retailer's Kentucky Sales and Use Tax Return (Form
11 51A102). Retailers may deduct these~~[-such]~~ sales on line six (6)~~[twenty-one (21)]~~ of the return. Retailers
12 claiming a deduction for sales to the federal government must maintain in their records~~[-files]~~ a copy of the
13 exemption authorization letter issued to the federal agency and a copy of the invoice upon which an official,
14 or an employee exercising comparable authority, of the federal government has signed and acknowledged
15 in writing that delivery of the property was actually made to the federal government.

16 Section 4.~~[5.]~~ Contractors may not claim the~~[The]~~ exemption when~~[-may not be claimed by contractors]~~
17 purchasing property to be used in fulfilling contracts with the federal government. As provided by 103 KAR
18 26:070, sales of property to contractors for use in fulfilling contracts with the federal, state, or local
19 governments for erecting, remodeling, or repairing structures or improvement on or to real estate are subject
20 to tax.

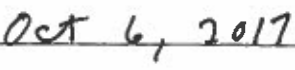
21 Section 5.~~[6.]~~ All federal government agencies seeking exemption under authority of this administrative
22 regulation must apply to the Division of Sales and Use Tax~~[Sales and Severance Tax Division]~~ for a tax
23 exemption authorization letter. The application (Form 51A125)~~[form]~~ may be obtained from the Division
24 of Sales and Use Tax~~[Sales and Severance Tax Division]~~, 501 High Street, Frankfort, Kentucky
25 40620~~[40601]~~ or from one (1) of the department's~~[cabinet's ten (10)]~~ field offices.

103 KAR 30:235

APPROVED BY AGENCY:



DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet



Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 28, 2017, at 1:00 p.m. in Room 11A, State Office Building, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov(email).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 30:235

Contact Person: Lisa Swiger

Phone Number: (502) 782-5705

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The current version of 103 KAR 30:235 contains an outdated reference to a line on the Kentucky Sales and Use Tax Return. The proposed amendment updates regulatory language to address this issue. The outdated reference to line twenty-one (21) on the Kentucky Sales and Use Tax Return is corrected to reference line six (6). The title is updated along with references to the "Sales and Severance Tax Division" and the DOR address. NECESSITY, FUNCTION AND CONFORMITY is updated to clarify the purpose of the regulation. Section 1 is deleted and language is updated throughout to bring up to date and clarify the tax treatment in the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation. The title is updated along with references to the "Sales and Severance Tax Division" and the DOR address. Section 1 is deleted and language is updated throughout to bring up to date and clarify the tax treatment in the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement the proposed amendment.

(b) On a continuing basis: There is no cost to implement the proposed amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no additional cost to implement and enforce the proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no additional cost to implement and enforce the proposed amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) : No. Tiering is not applied as the proposed amended regulation applies to all affected parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 30:235

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. This amendment is a cleanup effort as part of the Red Tape Reduction Initiative.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: